

**REQUEST FOR PROPOSALS
FOR THE LEASE OF THE MUAR HOUSE
AT 169 LAKESHORE DRIVE, ADJACENT TO KERSHAW PARK
CITY OF CANANDAIGUA**

Proposals are assumed to meet all procedures and accept all conditions and requirements of this Request for Proposal unless clearly labeled as a "Request for Exception." Requests for Exception are not discouraged, and will be judged within the overall City goal to find a Lessee who will:

- Bring a use which will enhance the City's vision for Kershaw Park as a popular recreation destination for residents and visitors,
- Provide the best overall financial return to the City,
- Complement the existing businesses on Lakeshore Drive,
- Provide public restrooms within the facility.

INFORMATION

The City of Canandaigua will accept proposals for the Lease of the Muar House, 169 Lakeshore Drive, Canandaigua, adjacent to Kershaw Park, until 5:00 p.m. on Wednesday, September 16, 2015. Proposal documents are available at the Canandaigua City Manager's office at City Hall, 2 North Main St., Canandaigua. All proposals must follow the procedures and meet the requirements listed in the proposal document. Proposals shall be submitted in a sealed envelope marked "*Muar House Lease Proposal.*"

A pre-proposal meeting and site visit will be held on Thursday, August 20, 2015, at 2:00 p.m. at the Muar House, 169 Lakeshore Drive, Canandaigua.

GENERAL TERMS AND CONDITIONS OF LEASE

Lease for Use of Premises

The City grants the Lessee the right to occupy and use the premises at 169 Lakeshore Drive for purposes to be specified by the Lessee in the submitted proposal.

Premises

The premises to be occupied by the Lessee include entire building at 169 Lakeshore Drive, a two-story former residential property constructed in 1937 and known as the Muar House. The house has a 100 amp electrical service, municipal water and sewer, and natural gas. The roof was replaced in 1992, and the furnace and water heater were replaced in 1998. The structure has 956 sq. ft. of gross floor area on the first floor, 702 sq. ft. on the second floor, and 936 sq. ft. in the basement, which has a garage door opening on the north side.

The Lease of the premises does not include any particular rights to the use of the adjacent public park, the lakefront, or the public parking lot other than those rights available to the general public, but does include the right to use the driveway leading from the public parking lot to the basement garage.

Improvements and Alterations to Property

The leased premises are provided as is without warranty as to condition or suitability for Lessee's purposes.

No alternations or improvements shall be made without the prior written approval of the City Manager of such improvements as shown on plans and detailed in specifications, including approval as to type, methods and location of alterations and repairs. Any improvements desired by the Lessee shall be made at the sole expense of the Lessee.

Lessee will be responsible for obtaining a Building Permit for all alterations and improvements performed by the Lessee, and for obtaining a Certificate of Occupancy.

Provision of Public Restrooms

The Lessee shall agree that the general public shall have full access to the first-floor restrooms within the building at all times that the business is open to the public. The Lessee will provide all paper products, soap, and other supplies necessary for the provision of this service.

Utilities

Lessee shall be responsible for all water, sewer, electricity, natural gas and other utilities due to its occupancy of the premises and the use of the restrooms by the general public.

Protection of Property

Protection of leased property and personal property shall remain the sole responsibility of the Lessee.

Insurance Requirements

The City will require the following insurance requirements:

The Lessee shall procure and maintain at his own expense insurance for liability for damages, costs or claims in the amount and kinds hereinafter provided with insurance companies authorized to do business in New York State, such policies to embrace all operations to be performed under the Lease whether by the Lessee or his employees.

The Leased premises shall not be occupied until all required insurance policies and certificates of insurance have been approved by the City. All policies shall provide for thirty days written notice to the City by certified mail before cancellation.

The Insurance and Indemnification provisions of the contract shall be as follows:

- A. Workers' Compensation and Employer's Liability Insurance covering all operations under the Lease.
- B. General Liability Insurance with a minimum combined single limit of \$2,000,000 for bodily injury and property damage. This insurance shall indicate on the Certificate of Insurance the following coverages:
 - (1) Premises - Operations
 - (2) Independent Contractor and Subcontractors
 - (3) Products and Completed Operations
 - (4) Broad Form Contractual
- C. Disability Benefits: The Contractor shall provide proof of compliance with the Disability Benefits Law.
- D. Protective Liability Insurance: The Lessee shall provide the original and duplicate policy of insurance to the City. This insurance contract shall name the City of Canandaigua as the insured and remain in effect until the Lease has been terminated.

The insurance shall provide minimum limits of liability per occurrence of \$2,000,000 for bodily injury and property damage. Said insurance shall provide that the term "Owner" or "City of Canandaigua" shall be deemed to include all boards, bureaus, divisions, departments, and offices of the City and the individual members, employees and agents thereof in their official capacities.

All policies and certificates of insurance of the Contractor shall contain the following clauses:

- A. Insurers shall have no right of recovery or subrogation against the City of Canandaigua (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverages for any and all losses covered by the above described insurance.
- B. The clause "other insurance provisions" in a policy in which the City of Canandaigua is named as an insured, shall not apply to the City.
- C. The insurance companies issuing the policy or policies shall have no recourse against the City of Canandaigua (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

D. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Lessee.

The following Indemnification Agreement shall be, and is hereby a provision of the Lease and shall be endorsed on the reverse sides of all certificates of insurance:

The Lessee agrees to protect, defend, indemnify and void the City of Canandaigua and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, shall be included in the indemnity hereunder. The Lessee further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims etc.) is groundless, false or fraudulent.

In any case in which such indemnification would violate Section 5-322-1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the City for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its employees.

Property Damage

The Lessee waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of light, electrical current, gas or water supply which may occur from time to time for any cause, or for any loss or damage sustained by the Lessee resulting from fire, water, tornado, civil commotion or riots or earth movement.

In the event that the premises shall suffer minor damage by fire or other casualty, but shall not be rendered unLesseeable, the premises shall be repaired by the Lessee to the extent of the insurance proceeds available for such purpose.

Any damage done to the leased premises by the Lessee or any person who may be in or on the premises with the consent of Lessee, except normal wear and tear, shall be the responsibility of the Lessee.

Right to Inspect Premises

The Lessee shall allow the City Manager's designee access to the premises at all reasonable hours for the purpose of examining and inspecting the premises, or making necessary structural building or utility repairs, or for any other purpose, not unduly affecting the operation of the Lessee's business.

Maintenance

The Lessee is responsible for general housekeeping, janitorial services and repair of the premises on a daily basis, including frequent cleaning and maintenance of the public restrooms and maintenance and repair of the HVAC system and plumbing. Lessee is also responsible for landscape maintenance of the leased parcel.

Security Deposit

The Lessee agrees to deposit with the City one of the following at the time of execution of the Lease: (a) an irrevocable letter of credit from a New York State bank naming the City as beneficiary and in a form satisfactory to the City; or (b) a performance bond issued by a surety or sureties satisfactory to the City, to guarantee the faithful performance by the Lessee of all of the terms and conditions of this document. The amount of such letter of credit or performance bond shall be six months' rent

Signage

The Lessee may erect one or more suitable signs at the premises informing the public of the nature of the products and services provided, prices and the name of the Lessee furnishing the same. Signage must conform to City regulations, and permits must be obtained for all signage.

Trash Disposal

The Lessee shall not permit garbage and other refuse to accumulate or gather in, about or around the premises. The Lessee will be responsible providing covered waste receptacles, and for all waste removal.

The Lessee shall abide by all applicable City and County waste recycling regulations. The Lessee shall be solely responsible for the removal and proper disposal of all hazardous or toxic waste.

Special Events and Festivals

The City maintains the right to hold special events or festivals on the Kershaw Park grounds and facilities without prejudicing the terms of this agreement. The Lessee shall have the right to operate per the terms expressed herein during any special event or activity.

Amplified Sound

Lessee shall not use sound amplifying devices to attract customers to the premises.

Compliance with Laws

Lessee shall comply with all laws, ordinances, rules and regulations of the federal, state and municipal authorities and departments relating to or affecting any and all parts of this agreement and shall at his own cost and expense, secure and obtain any and all permits and Leases that may be necessary in connection herewith.

Successors and Assigns

This Lease and all of the covenants hereof shall insure to the benefit of and be binding upon the City and the Lessee, respectively, and his partners, successors, assigns and legal representatives. Neither the City nor the Lessee shall have the right to assign, transfer or sublet interests or obligations hereunder.

Payment of Taxes

The Lessee shall promptly pay, when due, all sales taxes, retail sales and use taxes, consumer taxes, property tax (if assessed for the Leased area), permit fees, Lease fees, Pure Water charges and/or other taxes or fees which may be assigned, charged or levied against it when said taxes or fees are due and payable with respect to the Lessee's operation.

**ADDITIONAL TERMS AND CONDITIONS
OF PROPOSED LEASE AGREEMENT****Amount of Lease Payment**

The Proposal shall specify the amount of the proposed annual lease payment that can be paid on an annual or monthly basis. Such payment shall not be less than the Fair Market Value of the premises.

Payment

Annual Lease payments paid on an annual or monthly basis will be paid in advance on or before the first day of each year or month of the term of the Lease.

Term of Lease, Renewal

The City proposes a renewable 5-year lease, with terms to be negotiated.

Termination of Lease

Either party shall have the right to terminate the Lease with 30 days written notice. In the event of a material breach of this Lease by the Lessee, the City shall notify the Lessee which will have 72 hours to cure the breach. The City shall have the right to terminate this agreement on 72 hours written notice to the Lessee in the event of a material breach, which Lessee fails to cure in the provided time. A breach of any condition of this Lease shall constitute an event of default, including but not limited to the Lessee's failure to pay the Lease fee when due, or failure to operate the business as specified in the proposal. In the event of default and termination of this agreement, the Lessee shall remain liable for the Lease fee for the security deposit. If at the time of default there is any unpaid Lease fee due or to become due, which is in excess of the Lease fee security deposit, the City shall have the right to take possession of the leased premise and any equipment or inventory on the premises as additional security, sell same in a commercially reasonable manner, and apply the sales proceeds to any balance due the City.

Non-discriminatory Practices

Lessee shall comply with all state and federal regulations regarding nondiscrimination in employment and service of customers.

The City requires the best efforts on the part of its Lessees to solicit and obtain the participation of minorities and women as subcontractors, suppliers and employees on this Lease.

REQUEST FOR PROPOSAL PROCESS

Right to Reject Proposals

The City reserves the right to reject any or all proposals, and to waive technicalities, irregularities and omissions or solicit new proposals if, in the City's judgment, the best interests of the City will be served thereby.

Right to Negotiate

This Request for Proposal does not constitute an offer by the City. If the City decides to proceed with the awarding of a Lease, City staff will meet with the selected Proposer(s) to negotiate the specific terms of the Lease. The general conditions of the Lease, which are not negotiable, are outlined in the RFP. The City reserves the right to negotiate final terms and conditions of the Lease with the final selected Proposer(s).

Questions

Any questions about the above conditions concerning the terms shall be in writing to the City Manager. Questions regarding the building shall be directed to the Public Works Director. Any interpretation or correction of the documents will be made only by addendum duly issued and a

copy of the addendum will be mailed or delivered to each person receiving a set of Proposal Documents. No oral interpretations will be made to any Proposer as to the meaning of the Proposal Documents or any part thereof, and neither the City of Canandaigua nor the City Manager will be responsible for any other explanations or interpretations of the Proposal Documents. All such addenda duly issued shall be part of the Proposal Documents, and all Proposes shall be bound by such addenda, whether or not received by them. In addition thereto, copies of the addenda will be posted at City Hall, 2 North Main Street, Canandaigua, New York 14424.

Proposal Acceptance

Acceptance of a proposal will be the enactment of a Resolution of Award by the City Council. The acceptance shall obligate the Proposer to execute the Lease.

Execution of Lease

The Proposer whose proposal has been accepted shall execute the Lease within five (5) calendar days of the acceptance of the proposal.

Execution of the Lease includes signing the agreement and furnishing the required bonds and certificate of insurance.

Failure of the Proposer whose proposal is accepted to execute the Lease shall constitute a breach of his obligation created by the acceptance of his proposal by the City of Canandaigua and in such event the City may determine that such Proposer's proposal and the acceptance thereof shall be null and void and the City shall be entitled to take action for damages. Such damages shall include the amount of the proposal finally executed in excess of that of the abandoned proposal, and all other items of cost to the City resulting from such breach. In recovery of the damages, the City may proceed against the sum represented by the security deposit, or take such other action as the City may deem best in the public interest.

PROPOSAL REQUIREMENTS

Proposal Documents

The following documents listed below shall be attached to and be incorporated into the Lease:

- A. Information
- B. Proposal Sheet
- C. Addendum (if used)
- D. Proposal
- E. Non-Collusive Certification
- F. Proposal Signature Sheet

Qualifications

The Proposer must meet the following qualifications:

- A. Demonstrated experience in the business proposed to be located on the premises.
- B. Provide a minimum of three business references, with at least one reference that speaks to financial ability.
- C. Fully complete the proposal documents.

The City reserves the right to investigate information submitted by any Proposer and to independently evaluate the qualifications of each Proposer and to request additional information from any or all Proposers.

Criteria

The City will evaluate proposals according to the following criteria:

- A. Compliance with request for proposal including general conditions.
- B. Demonstrated relevant experience.
- C. Financial strength, credit worthiness and available capital.
- D. Quality of business use as described in the proposal.
- E. References.
- F. Quality of proposal submitted.

Proposals are assumed to meet all procedures and accept all conditions and requirements of this Request for Proposal unless clearly labeled as a "Request for Exception." Requests for Exception are not discouraged, and will be judged within the overall City goal to find a Lessee who will:

- Bring a use which will enhance the City's vision for Kershaw Park as a popular recreation destination for residents and visitors,
- Provide the best overall financial return to the City,
- Complement the existing businesses on Lakeshore Drive,
- Provide public restrooms within the facility.

Proposal

All proposals must include the following information:

- A. Name, address and phone numbers of Proposer, all principals and investors.
- B. Complete description of business operation proposed including goods, merchandise and services to be provided, days and hours of operation. Any exceptions taken to the proposal document conditions must be stated in the proposal.
- C. Documentation of previous experience in the proposed business.
- D. Complete set of City Proposal Documents with Non-Collusion Certification and Proposal Signature Sheet.

Proposals shall be submitted in a sealed envelope marked ***"Muar House Lease Proposal."*** To the Canandaigua City Manager's office at City Hall, 2 North Main Street, Canandaigua, NY 14424 no later than 5:00 p.m. on Wednesday, September 16, 2015.

CITY OF CANANDAIGUA
NON-COLLUSIVE CERTIFICATION

By submission of this proposal, each Proposer and each person signing on behalf of any Proposer, certifies, and in case of a joint proposal, each party thereto certified as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

1. The prices and fees in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices and fees with any other Proposer or with any competitor.
2. Unless otherwise required by law, the prices and fees which have been quoted in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to the opening, directly or indirectly, to any other Proposer or to any competitor.
3. No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.
4. The Proposer herein has carefully examined the annexed form of the proposal and proposal documents.

STATE OF _____

COUNTY OF _____

CITY OF _____

SS _____

Signature of Proposer

Business Address

Sworn to and subscribed before me this _____ day of _____, 2015

Notary Public

PROPOSAL SHEET

Company: _____

Representative/Contact Person: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Exceptions (if any) to Contract:

[illegible]

continued on page 11

Proposal Sheet Continued

Description of business operation proposed including goods, merchandise and services to be provided, days and hours of operation.

[illegible]

LEASE AGREEMENT

THIS AGREEMENT, made as of the ____ day of _____ 2015 by and between the City of Canandaigua, New York, hereinafter called the "City" and, _____, Corporation/Individual/Partnership (cross out inapplicable) having its principal office at

Number	Street
City, Village or Town hereinafter called the "Lessee".	State Zip Code

WHEREAS, the Lessee has furnished the attached proposal to operate a business at the Muar House, 169 Lakeshore Drive, in strict compliance with the proposal documents herein mentioned, which are hereby made a part of the Lease.

CONTRACT DOCUMENTS: This agreement consists of the proposal documents listed below, in the event that any provision of one proposal document conflicts with provision of another document, the provision in that document first listed below shall govern, unless otherwise specifically stated:

1. Lease Agreement (this agreement).
2. Addenda to Agreement, if any.
3. Legal and procedural documents.
 - a. Proposal Acceptance (resolution of award).
 - b. Proposal Documents including information and general conditions.
 - c. Proposal.
 - d. Special Conditions, if any.

TERMS and CONDITIONS:

1. Lease for Use of Premises

The City grants the Lessee the right to occupy and use the premises at 169 Lakeshore Drive for purposes specified by the Lessee in the submitted proposal.

2. Use of Premises

The premises to be occupied by the Lessee include entire building at 169 Lakeshore Drive, a two-story former residential property constructed in 1937 and known as the Muar House. The house has a 100 amp electrical service, municipal water and sewer, and natural gas. The roof was replaced in 1992, and the furnace and water heater were replaced in 1998. The structure has 956 sq. ft. of gross floor area on the first floor, 702 sq. ft. on the second floor, and 936 sq. ft. in the basement, which has a garage door opening on the north side.

The Premises shall be used and occupied by Lessee only for the purpose of carrying on the business, profession, or trade set forth in its proposal. Lessee shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-

governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

The Lease of the Premises does not include any particular rights to the use of the adjacent public park, the lakefront, or the public parking lot other than those rights available to the general public, but does include the right to use the driveway leading from the public parking lot to the basement garage.

3. Rent Payment

Lessee agrees to pay the City the amount of \$_____ in _____ installments payable _____.

Rent shall be paid no later than _____ by check made payable to the "City of Canandaigua" at:

ATTN: Clerk/Treasurer, 2 N. Main St., Canandaigua, NY 14424.

In the event that any payment by Lessee is returned for insufficient funds ("NSF") or if Lessee stops payment, Lessee shall be responsible for a \$50 return check fee.

4. Security Deposit

The Lessee agrees to deposit with the City one of the following at the time of execution of the Lease: (a) an irrevocable letter of credit from a New York State bank naming the City as beneficiary and in a form satisfactory to the City; or (b) a performance bond issued by a surety or sureties satisfactory to the City, to guarantee the faithful performance by the Lessee of all of the terms and conditions of this document. The amount of such letter of credit or performance bond shall be six months' rent.

5. Term of Lease; Renewal

The initial term of this Agreement shall commence on _____ and shall terminate on _____ **at 12:00 – Noon** . On the termination date, Lessee shall be required to vacate the Premises and leave the Premises in a clean and orderly condition to facilitate re-rental by the City. All other terms and conditions as outlined in this Agreement shall remain in full force and effect.

The Lease may be renewed for an additional 5 year term on the mutual agreement and consent of the Parties executed prior to the termination date.

6. Improvements and Alterations to Property

The leased premises are provided as is without warranty as to condition or suitability for Lessee's purposes.

No alternations or improvements shall be made without the prior written approval of the City Manager of such improvements as shown on plans and detailed in specifications, including approval as to type, methods and location of alterations and repairs. Any improvements desired by the Lessee shall be made at the sole expense of the Lessee.

Lessee will be responsible for obtaining a Building Permit for all alterations and improvements performed by the Lessee, and for obtaining a Certificate of Occupancy.

7. Maintenance

The Lessee is responsible for general housekeeping, janitorial services and repair of the premises on a daily basis, including frequent cleaning and maintenance of the public

restrooms and maintenance and repair of the HVAC system and plumbing. Lessee is also responsible for landscape maintenance of the leased parcel.

8. Provision of Public Restrooms

The Lessee shall agree that the general public shall have full access to the first-floor restrooms within the building at all times that the business is open to the public. The Lessee will provide all paper products, soap, and other supplies necessary for the provision of this service. Lessee shall keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Lessee shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Lessee.

9. Utilities

Lessee shall be responsible for all water, sewer, electricity, natural gas and other utilities due to its occupancy of the premises and the use of the restrooms by the general public.

10. Protection of Property

Protection of leased property and personal property shall remain the sole responsibility of the Lessee.

11. Insurance Requirements

Lessee shall provide the following insurance requirements:

The Lessee shall procure and maintain at his own expense insurance for liability for damages, costs or claims in the amount and kinds hereinafter provided with insurance companies authorized to do business in New York State, such policies to embrace all operations to be performed under the Lease whether by the Lessee or his employees.

The Leased premises shall not be occupied until all required insurance policies and certificates of insurance have been approved by the City. All policies shall provide for thirty days written notice to the City by certified mail before cancellation.

The Insurance and Indemnification provisions of the contract shall be as follows:

- A. Workers' Compensation and Employer's Liability Insurance covering all operations under the Lease.
- B. General Liability Insurance with a minimum combined single limit of \$2,000,000 for bodily injury and property damage. This insurance shall indicate on the Certificate of Insurance the following coverages:
 - (1) Premises - Operations
 - (2) Independent Contractor and Subcontractors
 - (3) Products and Completed Operations
 - (4) Broad Form Contractual
- C. Disability Benefits: The Contractor shall provide proof of compliance with the Disability Benefits Law.

- D. Protective Liability Insurance: The Lessee shall provide the original and duplicate policy of insurance to the City. This insurance contract shall name the City of Canandaigua as the insured and remain in effect until the Lease has been terminated.

The insurance shall provide minimum limits of liability per occurrence of \$2,000,000 for bodily injury and property damage. Said insurance shall provide that the term "Owner" or "City of Canandaigua" shall be deemed to include all boards, bureaus, divisions, departments, and offices of the City and the individual members, employees and agents thereof in their official capacities.

All policies and certificates of insurance of the Contractor shall contain the following clauses:

- A. Insurers shall have no right of recovery or subrogation against the City of Canandaigua (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverages for any and all losses covered by the above described insurance.
- B. The clause "other insurance provisions" in a policy in which the City of Canandaigua is named as an insured, shall not apply to the City.
- C. The insurance companies issuing the policy or policies shall have no recourse against the City of Canandaigua (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.
- D. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Lessee.

The following Indemnification Agreement shall be, and is hereby a provision of the Lease and shall be endorsed on the reverse sides of all certificates of insurance:

The Lessee agrees to protect, defend, indemnify and void the City of Canandaigua and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, shall be included in the indemnity hereunder. The Lessee further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims etc.) is groundless, false or fraudulent.

In any case in which such indemnification would violate Section 5-322-1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify

the City for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its employees.

12. Property Damage

The Lessee waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of light, electrical current, gas or water supply which may occur from time to time for any cause, or for any loss or damage sustained by the Lessee resulting from fire, water, tornado, civil commotion or riots or earth movement.

In the event that the premises shall suffer minor damage by fire or other casualty, but shall not be rendered unLesseeable, the premises shall be repaired by the Lessee to the extent of the insurance proceeds available for such purpose.

Any damage done to the leased premises by the Lessee or any person who may be in or on the premises with the consent of Lessee, except normal wear and tear, shall be the responsibility of the Lessee.

13. Right to Inspect Premises

The Lessee shall allow the City Manager's designee access to the premises at all reasonable hours for the purpose of examining and inspecting the premises, or making necessary structural building or utility repairs, or for any other purpose, not unduly affecting the operation of the Lessee's business.

14. Signage

The Lessee may erect one or more suitable signs at the premises informing the public of the nature of the products and services provided, prices and the name of the Lessee furnishing the same. Signage must conform to City regulations, and permits must be obtained for all signage.

15. Trash Disposal

The Lessee shall not permit garbage and other refuse to accumulate or gather in, about or around the premises. The Lessee will be responsible providing covered waste receptacles, and for all waste removal.

The Lessee shall abide by all applicable City and County waste recycling regulations. The Lessee shall be solely responsible for the removal and proper disposal of all hazardous or toxic waste.

16. Special Events and Festivals

The City maintains the right to hold special events or festivals on the Kershaw Park grounds and facilities without prejudicing the terms of this agreement. The Lessee shall have the right to operate per the terms expressed herein during any special event or activity.

17. Amplified Sound

Lessee shall not use sound amplifying devices to attract customers to the premises.

18. Compliance with Laws

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of New York. Lessee shall comply with all laws, ordinances, rules and

regulations of the federal, state and municipal authorities and departments relating to or affecting any and all parts of this agreement and shall at his own cost and expense, secure and obtain any and all permits and Leases that may be necessary in connection herewith.

19. Successors and Assigns

This Lease and all of the covenants hereof shall insure to the benefit of and be binding upon the City and the Lessee, respectively, and his partners, successors, assigns and legal representatives. Neither the City nor the Lessee shall have the right to assign, transfer or sublet interests or obligations hereunder.

20. Payment of Taxes

The Lessee shall promptly pay, when due, all sales taxes, retail sales and use taxes, consumer taxes, property tax (if assessed for the Leased area), permit fees, Lease fees, Water/Sewer charges and/or other taxes or fees which may be assigned, charged or levied against it when said taxes or fees are due and payable with respect to the Lessee's operation.

21. Indemnification.

The City shall not be liable for any damage or injury of or to the Lessee, Lessee's guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part, or in the structure or equipment of the structure of which the Premises are a part, and Lessee hereby agrees to indemnify, defend and hold the City of Canandaigua harmless from any and all claims or assertions of every kind and nature.

22. Termination; Default.

Either party shall have the right to terminate the Lease with 30 days written notice. In the event of a material breach of this Lease by the Lessee, City must provide notice of default to the Lessee and Lessee shall have 72 hours from receipt of the Notice to cure any such default. If the Lessee does not cure the default within the required time frame, City may terminate this Agreement by providing the Lessee with a notice of termination. The notice of termination must state the date the tenancy will end, which may be no fewer than three (3) days after the date of the notice of termination. Lessee must vacate the premises on or before the termination date specified in the notice of termination and must return the keys on or before that date. The Lessee's continues to be responsible for unpaid rent, expenses, damages, and losses, after termination of this Agreement. In addition, if this Agreement is terminated, City may, at City's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to City at law or in equity. If at the time of default there is any unpaid Lease fee due or to become due, which is in excess of the Lease fee security deposit, the City shall have the right to take possession of the leased premise and any equipment or inventory on the premises as additional security, sell same in a commercially reasonable manner, and apply the sales proceeds to any balance due the City.

A breach of any condition of this Lease shall constitute an event of default, including but not limited to the Lessee's failure to pay the Lease fee when due, or failure to operate the business as specified in the proposal. In the event of default and termination of this agreement, the Lessee shall remain liable for the Lease fee for the security deposit.

23. Abandonment.

If at any time during the term of this Agreement Lessee abandons the Premises or any part thereof, City may, at City's option, obtain possession of the Premises in the manner

provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. City may, at City's discretion, as agent for Lessee, re-let the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such re-letting, and, at City's option, hold Lessee liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by City by means of such re-letting, after considering the cost of repairs, attorney fees, advertising, and other costs associated with re-letting. If City's right of reentry is exercised following abandonment of the Premises by Lessee, then City shall consider any personal property belonging to Lessee and left on the Premises to also have been abandoned, in which case City may dispose of all such personal property in any manner City shall deem proper and City is hereby relieved of all liability for doing so.

24. Attorneys' fees.

Should it become necessary for City to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Lessee agrees to pay all expenses so incurred, including a reasonable attorneys' fee.

25. Severability.

If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

26. Binding effect.

The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

27. Descriptive headings.

The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the City or Lessee.

28. Construction.

The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

29. Non-waiver.

No indulgence, waiver, election or non-election by City under this Agreement shall affect Lessee's duties and liabilities hereunder.

30. Modification.

The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

31. Non-discriminatory Practices

Lessee shall comply with all state and federal regulations regarding nondiscrimination in employment and service of customers. The City requires the best efforts on the part of its

Lessees to solicit and obtain the participation of minorities and women as subcontractors, suppliers and employees on this Lease.

32. Conflict of interest.

Contractor hereby stipulates and certifies that there is no member of the Canandaigua City Council or other Canandaigua City Officer or Employee forbidden by law to be interested in the Agreement directly or indirectly, who will benefit therefrom or who is a party thereto

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT, the day and year first written above.

LESSEE

CITY OF CANANDAIGUA

BY

BY: David Forrest

TITLE

TITLE: City Manager

2 North Main Street

BUSINESS ADDRESS

ADDRESS

Canandaigua, NY _

CITY STATE

CITY STATE

DATE

DATE

STATE OF NEW YORK)
)SS.
COUNTY OF ONTARIO)

Acknowledgement
of Official Representative
of CITY

On this _____ day of _____,
2015, before me personally came and appeared
David Forrest
to me known, who being by me duly sworn
did depose and say that he is the
City Manager
of the
City of Canandaigua
described in, and which executed, the foregoing
instrument that by virtue of the authority conferred
on him by law he subscribed his name to the foregoing
instrument and that he executed the same for
the purpose therein mentioned.

(SEAL) _____

)SS.
COUNTY OF ONTARIO)

of LESSEE

On this _____ day of _____,
2015, before me personally came and appeared
_____,
to me known and known to me to be one of
the members of the firm of

Use this if an
Individual or
Partnership

(The person) described in, and who executed the
foregoing instrument, and he/she acknowledged
to me that he/she executed the same (as and for
the act and deed of said firm).

(SEAL) _____

STATE OF NEW YORK)
)SS.
COUNTY OF ONTARIO)

Use this if a
Corporation

On this _____ day of _____,
2015, before me personally came and appeared
_____,
to me known who being by me duly sworn, did
depote and say the he/she resides at
_____,
the he/she is the _____
of the _____,
the Corporation described in, and which executed
the foregoing instrument; that he/she knows the
seal of said Corporation; that one of the seals
affixed to said instrument is said seal; that it
was so affixed by order of the Directors of said
Corporation and that his/her name thereto by
like order.

(SEAL) _____

Approval of

Due execution approved: _____ Date: _____

Owner's
Attorney